FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/172420

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 12, 2016, at Elkhorn, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified a request from [redacted] to provide physical therapy to the Petitioner.

NOTE: The record was held open until April 26, 2016, to give Petitioner's mother an opportunity to submit additional documentation. Petitioner's mother submitted the following:

Exhibit 4 – A letter from [redacted], MD
Exhibit 5 – Letter from [redacted], PT
Exhibit 6- Letter from [redacted], PT
Exhibit 7 – Letter from [redacted], APNP

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: OIG by letter
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County.

2. On December 17, 2015, [redacted], submitted a request for prior authorization of 26 sessions of physical therapy for 26 weeks. (Exhibit 3, pg. 8)

3. The goals of the requested private therapy are to:

    a. "…ambulate 100 feet consecutively over unlevel services such as carpeting, gravel, or snow covered sidewalks, to improve functional mobility."

    b. "…transfer on/off the Meywalk to a variety of surfaces, such as standard chairs, her home couch, and a toilet, to facilitate transfers at home."

    c. "…perform turns with min. assist to facilitate functional mobility within her home."

    d. "…assume and maintain true midline posture in sitting >75% of the time to perform UE tasks to facilitate increased postural control and promrite better alginedm in manual w/c."

    e. "…demonstrate an improved gait patter by improved step length and consistent foot clearance without need to verbally cue."

    f. "…will return to prior level of function with gait with increased endurance to walk 200 feet without rest."

    (Exhibit 3, pgs. 21-24)

4. On January 6, 2016, and again on January 19, 2016, DHS asked [redacted] to provide the Petitioner's IEP (Individualized Education Program). On January 20, 2016, [redacted] complied. (Exhibit 3, pgs. 58 and 85)

5. Petitioner receives school based services. She receives 30 minutes per week of occupational therapy in the regular education class room, 30 minutes per week of occupational therapy in the special education setting and 90 minutes (two, 45 minute sessions) per week of physical therapy. (Exhibit 3, pg. 72)

6. The goals of the school-based therapy are as follows:

    a. "…increase her strength to improve her gross motor skills allowing for increased independence in school as measured by benchmarks below:

        aa. …will stand for at least 15 seconds, the time needed to manage clothing for toileting, 90% of the time presented.

        bb. …will be able to raise one hand off the bar in a standing position, when toileting for at least 10 seconds 90% of the time presented.

        cc. …will be able to walk from her walker from her wheelchair to the bathroom, transferring to the toilet and back with maximum of one rest taken when she is washing her hands, 75% of the times presented.

        dd. …will creep 3-4 paces with minimal assistance after assuming a hands and knees position independently 75% of the times required."

b. "…will demonstrate an improvement in the strength/posture/body awareness needed in order to participate in classroom desktop activities as measured by the following benchmarks:

aa. …will independently demonstrate the ability to maintain appropriate body/wheelchair alignment at her desk during classroom writing activities ¾ opportunities.

(Exhibit 3, pgs. 63-66)

7. Petitioner has a home exercise plan. (Testimony of Petitioner's mother; Exhibit 3, pg. 26)

8. On January 29, 2016, DHS sent the Petitioner and [redacted] notices that the request for physical therapy services was modified to 13 sessions over 26 weeks. (Exhibit 3, pgs. 79-85)

9. The Petitioner's mother, on Petitioner's behalf, submitted a request for fair hearing that was received by the Division of Hearings and Appeals on February 29, 2016. (Exhibit 1)

10. The Petitioner is an 11 year old child with spastic quadriparetic cerebral palsy with bilateral hip dysplasia, meaning she has muscle weakness in all four limbs and both hips are misaligned. (Exhibit 4)

DISCUSSION

Prior authorization is required for physical therapy services in excess of 35 treatment day "per spell of illness." Wis. Admin. Code §DHS 107.16(2)(b)

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department."

Wis. Admin. Code §DHS107.02(3)(e)

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. *Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;*
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. *Is not duplicative with respect to other services being provided to the recipient;*
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis added. Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

In the case at hand, [redacted] requested once weekly outpatient physical therapy to supplement, Petitioner's twice weekly school-based physical therapy. The Department of Health Services (DHS) modified the request and approved therapy once every other week to, "treat, assess for required modifications to home environment as a result of obtaining new equipment, revise her home program as necessary, monitor the member's equipment needs, and coordinate with school-based therapy provider(s)." (Exhibit 2, pg. 8) DHS opines that additional private therapy is not needed, because Petitioner already receives physical therapy in school twice per week, has a home exercise plan in which she engages at least four times per week and she receives occupational therapy twice per week.

Is the Requested Level of Therapy consistent with the Petitioner's Symptoms?

The record contains inconsistent information with regard to the Petitioner's condition. For example, one of the goals of the requested therapy is for the Petitioner to ambulate 100 feet, an improvement of 50 feet over her current ability. However, according to the notes kept by [redacted] regarding conversations with Petitioner's school-based therapist in October 2015, the Petitioner was able to "ambulate from the front door to the gymnasium, which is a sizeable distance… and that she was then able walk the length and width of the gymnasium with minimal fatigue." This contradictory information raises questions concerning the Petitioner's baseline and whether the requested level of therapy is necessary to address the Petitioner's deficits. It will also make things more difficult later one, because it will be difficult to determine whether the Petitioner has received any benefit from the therapy she is currently receiving.

As another example, there is contradictory information concerning the Petitioner's ability to transfer on and off a Meywalk. Petitioner's private therapist submitted a letter to DHS in support of coverage of a Meywalk indicating that the Petitioner was independent with transfers from a chair, couch and toilet without assistance from an adult. (Exhibit 2, pg. 21) Though the letter is not dated, based upon the notes

made by Petitioner's private therapist in December 2015 concerning her discussions with Petitioner's school-based therapist who indicated Petitioner was independent with transfers on and off the Meywalk, the request for the Meywalk must have been somewhat contemporaneous with the current PA request for physical therapy services dated December 17, 2015. (See Exhibit 2, pg. 19) As such, it is unclear why one of the current goals of the requested therapy is to teach Petitioner to transfer on and off the Meywalk. This again raises questions regarding whether the requested level of therapy is necessary to address the Petitioner's deficits.

Because the Petitioner's baseline condition is not entirely clear, it is difficult to conclude that the requested level of service appropriately addresses Petitioner's medical condition. As such, it does not meet the legal definition of medical necessity under Wis. Adm. Code. §DHS 101.03(96m)

Duplication of Services

The goals of the request therapy are to:

1. "…ambulate 100 feet consecutively over unlevel services such as carpeting, gravel, or snow covered sidewalks, to improve functional mobility."
2. "…transfer on/off the Meywalk to a variety of surfaces, such as standard chairs, her home couch, and a toilet, to facilitate transfers at home."
3. "…perform turns with min. assist to facilitate functional mobility within her home."
4. "…assume and maintain true midline posture in sitting >75% of the time to perform UE tasks to facilitate increased postural control and promrite better alginedm in manual w/c."
5. "…demonstrate an improved gait patter by improved step length and consistent foot clearance without need to verbally cue."
6. "…will return to prior level of function with gait with increased endurance to walk 200 feet without rest."

(Exhibit 3, pgs. 21-24)

The goals of the school-based therapy are as follows:

1. "…increase her strength to improve her gross motor skills allowing for increased independence in school as measured by benchmarks below:

   aa. …will stand for at least 15 seconds, the time needed to manage clothing for toileting, 90% of the time presented.

   bb. …will be able to raise one hand off the bar in a standing position, when toileting for at least 10 seconds 90% of the time presented.

   cc. …will be able to walk from her walker from her wheelchair to the bathroom, transferring to the toilet and back with maximum of one rest taken when she is washing her hands, 75% of the times presented.

   dd. …will creep 3-4 paces with minimal assistance after assuming a hands and knees position independently 75% of the times required."

2. "…will demonstrate an improvement in the strength/posture/body awareness needed in order to participate in classroom desktop activities as measured by the following benchmarks:

   aa. …will independently demonstrate the ability to maintain appropriate body/wheelchair alignment at her desk during classroom writing activities ¾ opportunities.

Though stated differently, the goals of both school-based therapy and private therapy include goals to strengthen the Petitioner's core to improve her sitting alignment and postural control, and to improve her ambulation. Under such circumstances it is found that at least some of the goals of private therapy and school-based therapy are duplicative and therefore, do not meet the legal definition of medical necessity under Wis. Adm. Code. §DHS 101.03(96m).

Regression

Petitioner's mother testified that since the Petitioner's authorization for private therapy was reduced to once every other week, beginning in late January 2016, that the Petitioner has lost functional ability. However, the record does not support this assertion.

The letter from Petitioner's physician dated April 13, 2016, indicates that the Petitioner has, "decreased her ability to walk and relies more on her hands and arms for weight bearing. She has no pain, but does have more weakness that in the past…" (Exhibit 4) However, the letter does not state during what period the loss of functional ability occurred, nor does it explain in terms of objective measurements, what abilities were lost.

The letter from Petitioner's private therapist dated April 14, 2016, indicates that Petitioner's functional ability declined, due to a 13 pound weight gain caused by a pubertal growth spurt, the development of scoliosis and an increase in a baclofen dosage. (Exhibit 5) However, there is no indication that Petitioner has lost functional ability since late January 2016, when the current period of therapy was approved. Nor, is any loss of ability attributed to the reduction of private therapy to once per week.

If there has been a loss of ability, despite receiving two sessions per week of physical therapy at school and one session of therapy every other week from a private therapist, one has to question whether Petitioner is able to carry over what she learns in physical therapy to other settings, and if not, whether any continued therapy is appropriate.

It should be noted that one of the stated goals of the private therapy, which is noted to be an on-going goal, not a new goal, refers to a decline, stating, "…will return to prior level of function, with gait increased endurance to walk 200 feet without rest." (Exhibit 3, pg. 22) This alludes to a decline that occurred before the 2015 request for services, not a decline that has occurred, since private therapy was approved once every other week. This previous decline is again in the Prior Authorization/Therapy Attachment, section 20, where it states the Petitioner, "has worked had over the last 6 months to return to her prior level of function due to her growth spurt in early 2015." So, again, there is nothing to suggest that the Petitioner's abilities have declined since January 2016.

Because the letter from Petitioner's private therapist does not clearly explain the period over which the Petitioner has experienced a decline and does not explain what the decline has been in objective measurable terms it is not sufficient to support an increase in private therapy at this time. I also note, that none of Petitioner's other medical providers have noted the development of scoliosis.

The letter from Petitioner's practical nurse also made a vague reference to "a functional decline over several months." (Exhibit 7) That letter fails to make clear, in objective measurable terms, what functional abilities were lost, nor does it state the reason for the decline. The letter also contradicts the letter from Petitioner's private therapist, in that it stated that the change in the baclofen dosage was, "likely not the main reason for her functional decline."

The letter from Petitioner's school-based therapist dated April 19, 2016, makes no assertion that Petitioner's strength, ability to transfer or ability to ambulate have declined, which might or might not be

contradicting the assertions of Petitioner's other providers. (Exhibit 6) If Petitioner has experienced a functional decline, despite receiving school based services twice per week, and private therapy every other week, Petitioner's school-based therapist and private therapist need to explain why the services they are providing aren't doing anything to help the Petitioner.

Because there is no clear documentation showing, in objective measurable terms, what functional declines the Petitioner has experienced since private therapy was approved at once every other week in January 2016, and because there is no clear explanation for why those declines occurred, there is insufficient evidence to support an increase in private therapy at this time.

In summary, it is clear that the Petitioner has a complex medical condition and that she has profound deficits in her functional abilities. No one is disputing the fact that the Petitioner requires some amount of physical therapy. However, the prior authorization request submitted by [redacted] did not provide sufficient information to support its request for weekly private services, when the Petitioner is already receiving twice weekly physical therapy at school, participating in a home exercise plan and also receiving occupational therapy services at school. In fact, the prior authorization request for physical therapy submitted by [redacted] contradicted information it provided to support coverage of a Meywalker.

Petitioner's mother should note that the current authorization for therapy expires July 7, 2016. [redacted] can, at any time, submit an amendment to the current PA or it can submit a new prior authorization request, seeking additional therapy, if it can write up a good request that has better documentation: 1) explaining what changed in Petitioner's condition, when and why, 2) providing objective measurements of Petitioner's ability before the change and what they are currently, 3) providing objective measurements of Petitioner's current progress in therapy and, 4) if there has been no progress or very little progress, providing a detailed explanation for why.

I also note that since Petitioner's current IEP notes a loss of ability during the summer of 2015, Petitioner's mother might wish to talk to the school about its legal obligation to provide an extended school year when a student is likely to lose progress over the summer, so that the Petitioner can continue to receive school-based services over the up-coming summer break and prevent any loss of progress between the spring and fall semesters.

I note to the Petitioner's mother that Petitioner's provider, [redacted], will not receive a copy of this Decision. She might wish to share this with [redacted].

CONCLUSIONS OF LAW

DHS correctly modified a request from [redacted] to provide physical therapy to the Petitioner.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 9th day of May, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 9, 2016.

Division of Health Care Access and Accountability